

REMARKS

This Amendment is in response to the Advisory Action mailed on March 24, 2004 and is in further response to the Final Office Action mailed on October 7, 2003, and is supplemental to the Amendment After Final Action dated February 9, 2004 (not entered), which is incorporated herein by reference. Further, the Applicant wishes to thank Examiner DeBerry and SPE Kunz for the many courtesies provided during the March 26, 2004 telephonic interview; and, this paper is also responsive to matter then discussed. Submitted herewith are Declarations under 37 C.F.R. §1.132 and 37 C.F.R. §1.131, which traverse the rejections.

The amendments and declarations herewith place this application into allowable condition, and consideration and entry of this amendment and declarations and reconsideration and withdrawal of the objections to and rejections of the application, and prompt issuance of a Notice of Allowance are earnestly solicited.

In order to preserve Applicant's position, in the event that for some unknown and unexpected reason this application is not allowed, a Notice of Appeal and Petition for Extension of Time is concurrently filed herewith.

I. STATUS AND FORMAL MATTERS

Claims 1-11 are pending and at issue. Claims 12-26 are canceled, and claims 1-5 and 8 are amended, without prejudice, admission, surrender or without any intention to create any estoppel as to equivalents. Applicant reserves the right to pursue canceled subject matter in a continuation application.

No new matter is added.

It is submitted that these claims are patentably distinct from the references cited by the Examiner, and that these claims are in full compliance with the requirements of 35 U.S.C.

§112. The amendments and the remarks made herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments, additions and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled. In addition, it is submitted that the herein amendments and remarks are made in accordance with the March 26 interview mentioned above between the undersigned and Examiner DeBerry and SPE Kunz. Moreover, as claims herewith represent previous claims in independent form, there should be no estoppel as to equivalents (as there is no change of scope); and no estoppel is intended.

Support for the amended recitations to the claims is found throughout the specification.

II. THE CLAIMS ARE IN CONDITION FOR ALLOWANCE

Claim 1 was rejected to under 35 U.S.C. 102(a) in light of Bruchfeld et al. Claims 2-5 and 7-11 were rejected under 35 U.S.C. 103(a) as being obvious over the combination of Bruchfeld et al. and Niitsu et al.

Pursuant to the helpful suggestions of Examiner DeBerry and SPE Kunz during the March 26 interview, the instant amendment and attached declarations of Dr. Dieterich (37 C.F.R. §1.131 declaration) and Dr. Klotman (37 C.F.R. §1.132) are presented and it is believed that the claims are thus, in condition for allowance.

The declaration of Dr. Dieterich establishes that the conception and reduction to practice of the instant invention, as claimed and disclosed, was performed in the United States prior to the September 2000 date of Bruchfeld et al. Accordingly, the present application is believed to be entitled to antedate Bruchfeld et al. within the purview of 37 C.F.R. §1.131; and thus, Bruchfeld et al. is not available as prior art.

Accordingly, the rejection of claim 1 under 35 U.S.C. 102(a) as allegedly being anticipated by Bruchfeld et al. is moot. Further, as Bruchfeld et al. fails to qualify as prior art under 35 U.S.C. §102, it cannot be used as a basis for rejecting claims 2-5 and 7-11 under 35 U.S.C. §103(a). Further, Niitsu et al. does not disclose or suggest the features of the invention, namely the combination of IFN and RBV to treat HCV-infected patients, nor the combination of EPO treatment with the administration of IFN and RBV to treat HCV patients. Thus, the Section 103(a) rejections cannot stand.

In the surprising event that the herewith submitted declaration of Dr. Dieterich does not render the rejections of and objection to all the claims moot, Applicant also submits herewith the declaration of Dr. Klotman, which establishes that the instant invention, as claimed, is neither taught nor suggested by Bruchfeld et al. Accordingly, the present invention as claimed is not anticipated or suggested by Bruchfeld et al. Accordingly, the rejections of claim 1 under 35 U.S.C. 102(a) and of claims 2-5 and 7-11 under 35 U.S.C. 103(a) are overcome. Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

In view of the remarks and amendments herewith and those of record, and the declarations of Dr. Dieterich and Dr. Klotman, the application is in condition for allowance. Entry of this paper and of the declarations is respectfully requested. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance is earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date and again thanks the Examiner for the many courtesies extended during the March 26, 2004 telephonic interview.

Respectfully submitted,

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